

PROCEDURE 7. PHYSICAL SEARCHES

A. APPLICABILITY

This procedure applies to unconsented physical searches of any person or property within the United States and to physical searches of the person or property of a United States person outside the United States by DoD intelligence components for foreign intelligence or counterintelligence purposes. DoD intelligence components may provide assistance to the Federal Bureau of Investigation and other law enforcement authorities in accordance with Procedure 12.

B. EXPLANATION OF UNDEFINED TERMS

Physical search means any intrusion upon a person or a person's property or possessions to obtain items of **property** or information. The term does not **include** examination of areas that **are in** plain view and visible to the unaided eye if no physical trespass is undertaken, and does not include examinations of abandoned property left in a public place. The term also does not include any intrusion "authorized as necessary to accomplish **lawful** electronic surveillance conducted pursuant to Parts 1 and 2 of Procedure 5.

C. PROCEDURES1. Unconsented physical searches within the United States.

a. Searches of active duty ☐ilitary **personnel** for counterintelligence purposes. The counterintelligence elements of the Military Departments are authorized to conduct unconsented physical searches in the United States for counterintelligence purposes of, the person or property of active duty military personnel, when **authorized** by a military commander **empowered to** approve physical searches for law enforcement purposes pursuant to rule 315(d) of the Manual for Courts Martial, Executive Order 12198 (reference (h)), based upon a finding of probable cause 'to believe such persons are acting as agents of foreign powers. For purposes of this section, the term "agent of a foreign power" refers to an individual who meets the criteria set forth in subparagraph **C.2.b.(2)**, below.

b. "Other **unconsented** physical searches. Except as permitted by section **A.**, above, DoD intelligence components may not conduct unconsented physical **searches** of persons and property within the United States for foreign intelligence or counterintelligence purposes. DoD intelligence components may, however, request the FBI to conduct such searches. All such requests, shall be in writing; shall contain the information required in subparagraph **C.2.b.(1)** through (6), below; and be approved by an official designated in paragraph **C.2.c.**, below. A copy of each such request shall be furnished the General Counsel, DoD.

2. Unconsented physical searches outside the United States.

a. Searches of active duty military **personnel** for counterintelligence purposes. The **counterintelligence** elements of the Military Departments may **conduct unconsented** physical **searches** of the person or **property** of active duty military personnel outside the United States for counterintelligence purposes

when authorized by a military commander empowered to approve physical searches for law enforcement purposes pursuant to rule 315(d) of the Manual for Courts Martial, Executive Order 12198 (reference (h)), based upon a finding of probable cause to believe such persons are acting as agents of foreign powers. 'For purposes of this section, the term "agent of a foreign power" refers to an individual who meets the criteria set forth in subparagraph **C.2.B.(2)**, below.

b. Other **unconsented** physical searches. DoD intelligence components may conduct other **unconsented** physical searches for foreign intelligence and counterintelligence purposes of the person or property of United States persons outside the United States **only** pursuant to the approval **of** the Attorney General. Requests for such approval will be forwarded by a senior official designated in paragraph **C.2.c.**, below, to the Attorney General and shall include:

(1) An identification of the person or description of the property to be searched.

(2) A statement of facts supporting a finding that there is probable cause to believe the subject of the search is:

(a) A person who, for or on behalf of a foreign power, is engaged in clandestine intelligence activities (including covert activities intended to affect the political or governmental process), sabotage, or international terrorist activities, activities in preparation for international terrorist activities, or who conspires with, or knowingly aids and abets a person engaging in such activities;

(b) A person who is an officer or employee of a foreign power;

(c) A person unlawfully acting for, or pursuant to the **direction** of, a foreign power. The mere fact that a **person's** activities may benefit or further the aims of a foreign power does not justify an unconsented physical search without evidence that the person is taking direction from, or acting in knowing concert with, the foreign power;

(d) A corporation or other entity that is owned or controlled directly or indirectly by a foreign power; or

(e) A person in contact with, or acting in collaboration with, an intelligence or security **service** of a foreign power for the purpose of providing **access to information or material classified by the United States to** which such person has access.

(3) A statement of facts supporting a finding that the search is necessary to obtain significant foreign intelligence or counterintelligence.

(4) A statement of facts supporting a finding that the significant foreign intelligence or **counterintelligence expected to be obtained could not be** obtained by less intrusive means.

(5) A description of the significant foreign intelligence or counterintelligence expected to be obtained from the search.

(6) A description of the extent of the search and a statement of facts supporting a finding that the search will involve the least amount of physical intrusion that will accomplish the objective sought.

(7) A description of the expected dissemination of the product of the search, including a description of the procedures that will govern the retention and dissemination of information about United States persons acquired incidental to the search.

c. Requests for approval of **unconsented** physical searches under paragraph C.2.b. must be made by:

- (1) The Secretary or the Deputy Secretary of Defense;
- (2) The Secretary **or** the Under Secretary of a Military Department;
- (3) The Director, National Security Agency; or
- (4) The Director, Defense Intelligence Agency.